



ADVISORY COMMITTEE ON ROCK CRUSHERS AND QUARRIES

Senator Troy Fraser, *Chairman*
Senator Ken Armbrister
Senator Frank Madla
Representative Dennis Bonnen
Representative Byron Cook
Representative Edmund Kuempel

Commissioner James Oakley
Mr. John Lattimore, Jr.
Mr. John Weisman

The Honorable Rick Perry
Governor
State of Texas
P.O. Box 12428
Austin, Texas 78711-2428

Dear Governor Perry,

The Advisory Committee on Rock Crushers and Quarries is pleased to submit to you and the members of the Legislature an interim report.

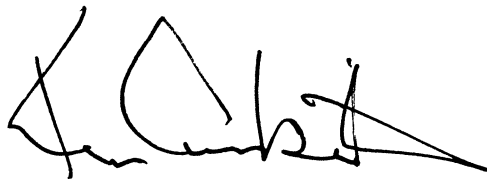
While this report is not signed by a majority of the committee members, we believe this report will provide the structure and background for future regulations on the permitting process for rock crushers and quarries at the Texas Commission on Environmental Quality.

We look forward to continuing to work with you and the members of the 79th Legislature.

Respectfully submitted,




Troy Fraser



Kenneth Armbrister



Frank Madla



James Oakley

cc: Lieutenant Governor David Dewhurst
Speaker of the House Tom Craddick

**ADVISORY COMMITTEE ON ROCK CRUSHERS
AND QUARRIES**



INTERIM REPORT TO GOVERNOR RICK PERRY

JANUARY -- 2005

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ADVISORY COMMITTEE ON ROCK CRUSHERS AND QUARRIES

BACKGROUND/INTRODUCTION

In the Fall of 2002, Senator Troy Fraser was called upon by the citizens of Burnet County to address the proliferation of rock quarries and rock crushing operations in Burnet County. Prompted by the concerns of his constituents, Senator Fraser filed Senate Bill 913 during the 78th Regular Session of the Texas Legislature. The legislation sought to establish new requirements and regulations under which the Texas Commission on Environmental Quality (TCEQ) would issue new air permits for the operation of rock crushers.

Although the legislation failed, it brought sufficient attention to the need for a comprehensive review of the TCEQ's current permitting process for these facilities. On May 27, 2003, Governor Rick Perry issued Executive Order RP-24, creating the Advisory Committee on Rock Crushers and Quarries. The committee was given one broad charge: "...to conduct a study on the authority of Texas Commission on Environmental Quality to consider all appropriate issues in permitting and regulating rock crushers, including rock crushers operating in association with quarries..."¹

The Governor appointed nine members to the committee: three members of the Texas Senate, three members of the Texas House of Representatives, and three members of the public. The legislative members appointed to the committee were: Senator Troy Fraser, (R-Horseshoe Bay), as Chairman; Senator Ken Armbrister (D-Victoria); Senator Frank Madla (D-San Antonio); Representative Dennis Bonnen (R-Angleton); Representative Byron Cook (R-Corsicana); and Representative Edmund Kuempel (R-Seguin). The public members appointed to the committee were: James Oakley, Burnet County Commissioner; John V. Lattimore Jr., President and CEO of Lattimore Properties, Inc., in McKinney; and John R. Weisman, President of Hunter Industries Ltd., in San Marcos.

¹ Executive Order RP-24

COMMITTEE HEARINGS

The committee held its first hearing in March, 2004 and conducted a comprehensive review of the current permitting process, including factors currently not taken into consideration by TCEQ when considering a permit application. The Texas Department of Transportation (TXDOT), Lower Colorado River Authority (LCRA) and Railroad Commission of Texas (RCT) provided testimony.

The second hearing was held in June, 2004. The hearing included briefings from the industry, including the Texas Aggregates and Concrete Association (TACA) and Associated General Contractors (AGC). Additionally, the committee heard testimony relating to non-permitted rock mining by dimension stone operators along the Brazos River. The Brazos River Conservation Coalition (BRCC), Brazos River Authority (BRA) and TCEQ Chairman Kathleen White provided testimony.

As previously mentioned, and as a general statement, the committee's work focused on issues commonly associated with rock quarry and rock crushing operations that currently are not considered by the state as part of the permitting process. Those issues included:

- the impact of local truck traffic on state and county roads in the vicinity of the rock quarry and crushing facilities
- the impact to air quality beyond the immediate vicinity of the crusher
- the impact to ground and surface water
- the impact of blasting on ground and surface water
- land reclamation, after mining operations have ceased

Rock quarrying and rock crushing operations are part of a major industry that plays a vital role in the continued growth of the Texas economy. Materials produced by these facilities are a key ingredient in highway construction at a time when the state is embarking on an aggressive plan to add much-needed capacity to serve a rapidly expanding population and relieve traffic congestion. The committee recognizes the important role that rock quarrying and rock crushing operations play in supplying aggregate for those projects.

Current law, however, seeks only to protect air quality in the permitting process by limiting emissions through measures such as water sprayers on machines, fugitive dust control measures on roads, and other conditions specified in the permit. Similarly, protection of water quality is addressed in limited fashion through the issuance of a storm water discharge permit. Changes should be made to the permitting process to further protect air and water quality standards, and to address other issues that are essential to protecting the state's natural resources and the public's safety.

COMMITTEE FINDINGS AND RECOMMENDATIONS

The Advisory Committee formulated the following findings and recommendations based on testimony, correspondence and research.

RECOMMENDATION 1: REQUIRE OPERATORS OF ROCK QUARRIES TO OBTAIN A QUARRY PERMIT.

A quarry permit would consist of five main components, including: (1) a site plan; (2) a transportation plan; (3) blasting regulations; (4) a reclamation plan; and (5) an approved air quality permit. A quarry permit application fee of \$1,000 would be required. The air quality permit would be the only component of the quarry permit that is challengeable through a contested case hearing. The requirements of this statute will apply to those permit applications that are filed after the effective date of the Act.

Site Plan: A site plan would be the first required component of the quarry permit. In order to assess the environmental soundness of the proposed operation, a site plan must be submitted to the TCEQ by the applicant. The site plan would include: a site map detailing the proposed permit area, the location and identification of all affected and unaffected areas, a description of the site location including the nearest stream, and the distance and direction from the nearest state and county road, and the nearest intersection. In addition, the site plan will detail the ingress and egress routes for the materials to be transported on public roadways. The site map should also include a detailed description of the stages in which the quarry will be mined.

The site plan must also include a report from an independent hydrologist on any ground or surface water in the proposed affected area. The report should detail any hydrologist recommendations that the permit applicant will be using to prevent any negative affect on ground and surface water and should be periodically updated to ensure that no damage is being done to any surrounding water source. The site plan must also detail how the company intends to address the recommendations made in the hydrologist report.

Transportation Plan: A transportation plan would be the second required component of the quarry permit. The permit shall contain a plan for transporting materials to and from the quarry over public roads. TCEQ must solicit a recommendation from TXDOT regarding the

adequacy and design capacity of the roadway to safely accommodate the additional volumes of traffic expected to be generated by the facility.

Blasting Plan: A blasting plan would be the third required component of the quarry permit if blasting is planned for the proposed operation. The plan would include a description of the blast warning, site access control equipment and procedures, and a description of types and locations of blast monitoring equipment and procedures to be used. The plan would also include descriptions of procedures and plans for the recording and retention of blasting records for each blast to be conducted. A blasting record would include the following information:

- the exact location, time and date of detonation
- the direction and distance to nearest dwelling, school, church or commercial or institutional building neither owned nor leased by the permittee
- the weather conditions during the blast
- the seismograph reading, including exact location of the seismograph and its distance from the blast, and
- the name of the person taking the seismograph/vibration monitors reading.

Blasting records, including seismograph/vibration monitor reports, shall be retained for a rolling two year period and shall be available for inspection by TCEQ.

Reclamation Plan: A reclamation plan would be the fourth component of the quarry permit. A reclamation plan to return all affected land at the proposed quarry site to a useful purpose must be submitted by the applicant. A description of how the affected land will be returned to a condition relative to its intended end use must be included. The plan shall be consistent with all lease and contractual terms stipulated between the lessee and lessor along with other conditions of the approved registration and will include the following: (1) a timetable for the completion of major steps in the reclamation plan; (2) a plan for grading that is consistent with the end use; (3) a plan for revegetation, if applicable, that is consistent with the end use. Additionally, a bond should be required in the amount of \$1,000 for each acre of proposed affected land. Operators would post bond on a two-year forward basis, with respect to the operator's site plan.

After land is reclaimed, a permittee must notify TCEQ of completion and is eligible for the applicable bond to be released on that parcel of land. The time frame for reclamation will be no more than three years after cessation of quarry operations. The time for completion could be lengthened with agency approval. The requirements stipulated for the reclamation plan are applicable to land disturbed after the effective date of the Act.

Approved Air Quality Permit: The final component of a quarry permit application is an approved air quality permit issued by the TCEQ.

RECOMMENDATION 2: GRANT TCEQ ADDITIONAL STATUTORY AUTHORITY TO REGULATE DIMENSION STONE MINING ALONG THE RIVERS AND STREAMS OF TEXAS.

Non-permitted dimension stone operations along the Brazos River and its tributaries in Palo Pinto and Parker Counties have adversely changed the river ecology and impacted surface water quality. The mines remove limestone and sandstone from the hills and bluffs above the river for use in landscaping, thus exposing the earth beneath. During heavy rains, the water washes the exposed soil and clay into the river; these materials are deposited along the shore and on small islands in the river, promoting the growth of weeds and grass. Excessive sedimentation can destroy aquatic habitat and high volumes of runoff can cause stream bank erosion.

In the Spring of 2004, in response to numerous inquiries by concerned citizens and the Brazos River Conservation Coalition, TCEQ developed a plan to investigate these types of facilities throughout the state ("Clear Streams Initiative"). The TCEQ through its Clear Streams Initiative issued 128 notices of violation, 38 notices of enforcement and six referrals to the Attorney General's office to rock quarry operators.² Through this initiative, it has become apparent that the TCEQ should enhance its enforcement procedures, especially with facilities operating adjacent to a state waterway. This will ensure that these facilities are operating in compliance with existing state and federal laws.

² As of September 15, 2004.

RECOMMENDATION 3: REQUIRE ALL AGGREGATE TRUCKS TO BE COMPLETELY TARPED.³

All aggregate haul trucks would be completely tarped regardless of the size of the material being hauled. This would be enforced by the Texas Department of Transportation, the Texas Department of Public Safety, and county and local law enforcement agencies. Penalties should be established by the Department of Public Safety.

RECOMMENDATION 4: PENALTIES FOR OPERATING WITHOUT A PRE-AUTHORIZED PERMIT FOR STORMWATER RUNOFF.⁴

Require the cessation of operation and a \$10,000 penalty for any aggregate facility operating without a pre-authorized permit for stormwater runoff. After a Notice of Violation is issued, an additional \$10,000 per day penalty would be assessed for each day the facility is operated without the required permit from the TCEQ. This proposed law change is very similar to the bill that passed during the 77th Regular Session regarding air permits for ready mix concrete batch plants in Texas.⁵

RECOMMENDATION 5: REQUIRE A CERTIFICATION AND CONTINUING EDUCATION PROGRAM AUTHORIZED BY TCEQ.⁶

Each producer of aggregate from a quarry or mine in the state should designate a person responsible for a certification and continuing education program authorized by TCEQ. The certification and continuing education program would be a required six-hour course provided on an annual basis and would stress best management practices for the production of aggregate from quarries and mines.

The certification program would be made available regionally by an educational facilitator preauthorized by the TCEQ. The names of the compliant companies and their designated employees fulfilling this six-hour requirement would be forwarded to the TCEQ for record keeping purposes.

³ Recommendation submitted by the Texas Aggregates and Concrete Association.

⁴ Ibid.

⁵ Senate Bill 1390, 77th Regular Session

⁶ Recommendation submitted by the Texas Aggregates and Concrete Association.

Companies must show compliance with TCEQ certification and continuing education requirements when applying for renewal of permits to produce aggregates by quarrying or mining.

RECOMMENDATION 6: CHANGES TO PERMITS BY RULE (PBR) AS THEY APPLY TO ROCK CRUSHERS AND QUARRIES.

Currently, the law provides that TCEQ can issue Permits by Rule (PBR) for rock crushers. PBR authorize a rock crusher to operate without obtaining an air quality permit if certain standards are met. The committee found that many rock crushers operate adjacent and concurrent PBR sites to circumvent the permitting process, a process known as "stacking" PBR.

The committee recommends that the TCEQ review PBRs for rock crushers and that rules be adopted to close the loophole that allows for facilities to potentially circumvent the permitting process. If TCEQ is unable to resolve this problem through the rule-making process, appropriate legislation should be passed to address the problem.

RECOMMENDATION 7: STRENGTHEN NOTICE PROVISIONS.

In addition to the current notification letter sent by TCEQ to the appropriate state Senators and Representatives, an identical letter also would be sent to the County Judge and County Commissioners of the County where the applicant desires to operate.

Additionally, the applicant would be required to furnish a copy of the permit application to the County Clerk for public viewing. Proprietary information and information not subject to disclosure under the Texas Public Information Act would remain confidential.

RECOMMENDATION 8: A STUDY TO BE PERFORMED BY THE STATE AUDITOR ON THE ACTUAL COST OF HIGHWAY CONSTRUCTION PROJECTS.

During the first hearing, Mr. Amadeo Saenz (Texas Department of Transportation) testified that "...the type of high quality hard dolomite ... that is currently in high demand in Texas, is primarily located on the fringes of the Llano Uplift Area. If, for example, quarries within this

geographic area were restricted from production or operation in any way, the result would greatly impact the availability of this desirable high grade dolomite."⁷

Senator Armbrister then questioned Mr. Saenz as to why TXDOT was limiting construction materials to only certain material types. Mr. Saenz stipulated that the State of Texas has performed research on the differing materials that are potentially involved in highway construction. In reviewing that research, TXDOT determined that "...the State of Texas has a lot of materials, and some materials have been, [through] research ... shown to be better for certain types [of] highways than others."⁸

The study should include complete costs of a highway building project including the quarrying and crushing of the material and the transportation costs associated with the project. The study should also compare costs associated with projects that receive material within a close proximity to their site and those that receive material from a greater distance away.

⁷ Testimony of Amadeo Saenz to the Advisory Committee on Rock Crushers and Quarries, March 29, 2004.

⁸ Ibid

TCEQ ENFORCEMENT

TCEQ should ensure that violators face the appropriate consequences. TCEQ must establish penalties that reduce the economic benefit of non-compliance, thereby taking away an important incentive for non-compliance. In order to provide that penalties are paid promptly, interest charges should be assessed on overdue penalties, and the agency should adopt new procedures to collect delinquent fees and penalties. These procedures could include referrals to the Attorney General for collection and the return of permit applications if the applicant has past due fees and penalties.⁹

A poor compliance record should also limit an entity's opportunity to obtain new authorizations. If an applicant has a poor compliance record, the agency would summarily reject, or add conditions designed to ensure compliance.¹⁰ Penalties should also be enhanced when a violator does not respond to enforcement notices. Compliance history and past violations should be used when considering new permits.

TCEQ should also focus more closely on preventing and reducing risk to human health and the environment. The agency should assign a higher priority and additional agency inspection and enforcement resources to those violators causing harm or that have the potential to cause harm. Inspections should be scheduled based primarily on a facility's potential risk to the environment. Because unauthorized facilities are less likely to install the controls needed to protect the environment, field resources should also be reserved every year to address unauthorized operations. Base penalties for violators that caused actual environmental harm should be increased.¹¹

⁹ Texas Commission on Environmental Quality, *Enforcement Process Review, Draft Final Report*, August 20, 2004.

¹⁰ Ibid.

¹¹ Ibid.